

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

USDA
D.LJ/MCO

2002 JUL 19 A 8:50

In re:

D & E Produce, LLC,
trading as Allred Produce, LLC,

Respondent

) PACA Docket No. D-02-0006
)
)
)
)
)

Decision Without Hearing
by Reason of Default

RECEIVED

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.), hereinafter referred to as "the Act," instituted by a complaint filed on January 15, 2002, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period of February through October 2000, Respondent D&E Produce, LLC, trading as Allred Produce, (hereinafter "Respondent") failed to make full payment promptly to seven sellers of the agreed purchase prices in the total amount of \$228,287.45 for 33 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate commerce. The complaint further alleges that Respondent's PACA license was obtained through false and misleading statements and that Respondent continued to use a denied trade name.

A copy of the complaint was sent to Respondent by certified mail on January 15, 2002 and received by the Respondent on January 24, 2002. No answer to the complaint has been received. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall

be issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a limited liability company organized and existing under the laws of the State of Texas. Its business mailing address is 1901 Fir Avenue, McAllen, Texas 78501. Its business mailing address is P.O. Box 3866, McAllen, Texas 78502.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 001843 was issued to Respondent on August 31, 2000. This license terminated on August 31, 2001, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. On July 20, 2000, Respondent was denied a license for the name "Allred's Produce" based on a determination by the agency that the use of that name would be deceptive, misleading or confusing to the trade. In obtaining PACA license number 001843 in the name of D&E Produce, LLC, Respondent reported no intention of using any additional trade or fictitious names in the licensing application. Question 3 of the license application specifically required Respondent to list any additional trade or fictitious names. Despite being denied a license for the use of the name "Allred's Produce," and failing to report its intention to continue to use the name "Allred's Produce" on its license application, at all times material herein, Respondent continued to use the trade name "Allred's Produce."
4. During the period of February through October 2000, Respondent purchased, received, and accepted in interstate commerce, from seven sellers, 33 lots of

fruit and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$228,287.45.

Conclusions

Respondent's continued use of a denied trade name, "Allred's Produce," constitutes a violation of Section 3(c) of the Act (7 U.S.C. § 499c(c)).

Respondent's failure to disclose its continued use of the denied trade name "Allred's Produce" on its licensing application constitutes a violation of Section 8(c) of the Act (7 U.S.C. § 499h(c)).

Respondent's failure to make full payment promptly with respect to the 33 transactions described above, constitutes willful, repeated and flagrant violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)).

Order

A finding is made that Respondent has violated Sections 3(c) and 8(c) of the Act (7 U.S.C. §§ 499c(c), 499h(c)) and committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)).

The facts and circumstances of the violations set forth herein shall be published.

This Order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings thirty-five days after service hereof unless appealed to the Secretary by a party to the proceeding within thirty days

after service as provided in Sections 1.139 and 1.145 of the Rules of Practice
(7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

this 19th day of July, 2002

Spencer A. Baker

Administrative Law Judge